

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: ERNEST POYZER, ALAN POYZER, AND DEAN POYZER Emmet County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2012-AQ- 15 NO. 2012-SW- 14
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TO: Ernest Poyzer
208 S. 12th Street
Estherville, Iowa 51334

Alan Poyzer
1261 Avenue South
Estherville, Iowa 51334

Dean Poyzer
214 252nd Street
Spirit Lake, Iowa 51360

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Ernest Poyzer, Alan Poyzer, and Dean Poyzer for the purpose of resolving the air quality and solid waste disposal violations which occurred during the disposal and burning of solid waste at property owned by Dean Poyzer in rural Estherville, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: Relating to legal requirements:

Amber Wolf, Field Office #3	Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources	Iowa Department of Natural Resources
1900 N. Grand Gateway North, Suite E17	7900 Hickman Road, Suite 1
Spencer, Iowa 51301-2200	Windsor Heights, Iowa 50324
Phone : 712/262-4177	Phone : 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Dean Poyzer owns a 38.12 acre property located at 1961 400th Avenue, rural Estherville, Iowa (SW ¼ of the SW ¼ of Section 30, Center Township, Emmet County, Iowa). There are several sheds, a barn, a concrete silo, a steel building, a grain bin, and a single family resident on the property. Mr. Poyzer does not live at the residence. The house is currently occupied by a tenant. Ernest and Alan Poyzer are brothers, and the sons of Dean Poyzer.

2. On October 24, 2011, DNR Field Office 3 received a complaint from DNR Law Enforcement Officer, Richard Jordet. Officer Jordet had been driving by Mr. Poyzer's property on October 22, 2011 and observed thick black smoke coming from the property. Officer Jordet took a photograph of the smoke. The Emmet County Sheriff's Department, the Iowa State Patrol, the Emmet County Emergency Management Director, and the Gruver Fire Department were also on scene.

3. On October 26, 2011, Amber Wolf, DNR Field Office 3 environmental specialist, contacted Terry Reekers, the Emmet County Emergency Management Director, to discuss the fire. Mr. Reeker stated he responded to the fire on October 22, 2011 at 2:00 p.m. He said that the black smoke from the fire could be seen for 20 miles. Mr. Reeker stated that the Poyzer brothers were responsible for the fire.

4. On October 26, 2011, Ms. Wolf and Bryon Whiting, DNR Field Office 3 environmental specialist senior, visited Mr. Poyzer's property. They observed a large burn pile with at least 15 appliances, many were partially burned; remnants of a burned tire; mattress coils; full garbage bags; shingles; window screens; wood scraps; various metal parts; plastic; and paper. It appeared that the solid waste on the bottom of the pile had been burned and more solid waste was added to the pile after the fire. Ms. Wolf and Mr. Whiting spoke to the tenant, who moved in on October 24, 2011. The tenant stated that Mr. Poyzer was the owner of the property.

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5. On October 28, 2011, Ms. Wolf contacted Kevin Olson, the Emmet County Chief Deputy. Chief Deputy Olson faxed a copy of the fire report to DNR Field Office 3. The report stated that Emmet County Sheriff Deputy Tony Ruter responded to the fire. When the deputy arrived on the property he observed Ernest and Alan Poyzer standing around a large fire. They were burning trash and other garbage, along with old appliances. Ernest and Alan Poyzer stated that they both lit the fire from both ends. Both gentlemen were charged with burning while under a burn ban. Neither claimed to be aware of the burn ban. The Gruver Fire Department was paged to respond to the fire.

6. On November 9, 2011, Ms. Wolf contacted Dean Poyzer. Mr. Poyzer acknowledged that the improper solid waste disposal and the open burning took place on his property. He stated that the solid waste had originated from several places and stated that he was not aware that the solid waste could not be burned. He stated that his sons, Ernest and Alan, were the ones who started the fire. At the time the site had not been cleaned up. Ms. Wolf informed Mr. Poyzer that he and his sons would be receiving Notice of Violation letters in the mail and the matter would be referred for further enforcement.

7. On November 23, 2011, Dean, Ernest, and Alan Poyzer were issued Notice of Violation and Notice of Referral letters. The letters described the improper solid waste and open burning violations. The letters also explained that the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Dean Poyzer admitted that burning occurred on his property and Ernest and Alan Poyzer started the burn pile on fire. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Various solid waste was improperly disposed of at Dean Poyzer's property. The solid waste was burned

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rather than being disposed of at a permitted landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Ernest, Dean, and Alan Poyzer agree to do the following:

1. Ernest, Dean, and Alan Poyzer shall remove the remaining solid waste and burn residue from Dean Poyzer's property and dispose of it at a permitted landfill within 30 days from the date the Director signs this administrative consent order;
2. Ernest, Dean, and Alan Poyzer shall submit the landfill receipts to DNR Field Office 3 within 14 days of the removal of the waste material;
3. Ernest, Dean, and Alan Poyzer shall immediately cease all open burning unless the burning is exempted by regulation;
4. Ernest, Dean, and Alan Poyzer shall immediately cease all improper waste disposal; and
5. Ernest, Dean, and Alan Poyzer shall pay a penalty of \$3,500.00 on accordance with the following payment plan. If any of the payments are not received in accordance with the payment plan, the remaining penalty shall be due immediately.

\$165.00 due March 15, 2012 pd.	\$145.00 due March 15, 2013
\$145.00 due April 15, 2012 pd.	\$145.00 due April 15, 2013
\$145.00 due May 15, 2012	\$145.00 due May 15, 2013
\$145.00 due June 15, 2012	\$145.00 due June 15, 2013
\$145.00 due July 15, 2012	\$145.00 due July 15, 2013
\$145.00 due August 15, 2012	\$145.00 due August 15, 2013
\$145.00 due September 15, 2012	\$145.00 due September 15, 2013
\$145.00 due October 15, 2012	\$145.00 due October 15, 2013
\$145.00 due November 15, 2012	\$145.00 due November 15, 2013
\$145.00 due December 15, 2012	\$145.00 due December 15, 2013
\$145.00 due January 15, 2013	\$145.00 due January 15, 2014
\$145.00 due February 15, 2013	\$145.00 due February 15, 2014

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. Iowa Code section 455B.146A provides for more serious criminal sanctions

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for air quality violations. 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$3,500.00 penalty. Ernest, Dean, and Alan Poyzer are jointly and severally liable for the administrative penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to follow the solid waste disposal regulations by the improper open burning of the solid waste allowed the Poyzers to save time and money. They were able to avoid landfill costs by burning the debris rather than taking it to the landfill. There were at least 15 appliances in the burn pile and the estimated disposal fee for each appliance is \$15.00. The exact volume or tonnage of the solid waste is unknown because the fire consumed all of the combustible material. Therefore, it is estimated that the Poyzers recognized an economic benefit of at least \$500.00 and that amount is assessed for this factor.

Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. The open burning and improper solid waste disposal may adversely impact the health of the citizens in the area surrounding the burn site. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. \$1,500.00 is assessed for gravity of violation.

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Culpability – The Poyzers have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Open burning and solid waste rules have been in place for more than 20 years. Based on the above considerations, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Ernest Poyzer, Dean Poyzer, and Alan Poyzer. For that reason Ernest Poyzer, Dean Poyzer, and Alan Poyzer waive the right to appeal this administrative order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

Chuck Gipp
ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 30th day of
May, 2012.

ERNEST POYZER
ERNEST POYZER

Dated this 15 day of
April, 2012.

ALAN POYZER
ALAN POYZER

Dated this 15 day of
April, 2012.

DEAN POYZER
DEAN POYZER

Dated this 15 day of
April, 2012.

*I would like a copy of this
contract with Roger Lande
signed also.*

Barb Stock (Con 10-6 Emmet County); Kelli Book; Field Office 3; EPA; VII.C.1

RECEIVED
MAY 21 2012
IDNR AIR QUALITY